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of the contract on the ground of mistake as to the boundaries of the land.

[Ed. Note.—For other cases, see Reformation of Instruments, Cent. Dig. § 159; Dec. Dig. § 45.* 9 Va.-W. Va. Enc. Dig. 875.]

Appeal from Circuit Court, Louisa County.

Action by Otis Perkins against G. E. Herring. From a judgment for defendant, plaintiff appeals. Reversed, and judgment rendered for plaintiff.

Jas. Lee Shelton and Wm. E. Bibb, for appellant.
F. W. Simans, for appellee.

MILLER et al. v. PENNIMAN & BRO. et al.

March 10, 1910.

[67 S. E. 516.]

1. Attorney and Client (§ 80*)—Liability of Client for Acts of Attorney—Check Payable to Attorney—Indorsement—Effect.—Real estate was sold for the benefit of creditors, and the sale commissioner made his check for the proceeds payable to S., the attorney for certain first-class judgment creditors, and to M. and D., attorneys for certain second-class judgment creditors. Whether the proceeds of the check were to be distributed pro rata among all the creditors, or only to those of the first class, was to be decided by two other attorneys, who found that they should be paid to S., the attorney for the first-class creditors. The check had been indorsed by the payees and left with M. to be deposited to their joint credit, but was deposited by him to his own credit, and the proceeds appropriated to his own use. S. was only able to collect part of the money, and contended that this amount only should be credited to his clients. Held, that the whole amount of the check must be credited upon the claims of the first-class creditors. The check having been made payable to all of the attorneys, no part of the check could have been collected by M. without the indorsement of S., and by his indorsement he made M. his agent to deposit the money, and M. in depositing the money to his own credit was not acting for his clients. Hence the second-class creditors could not be made to pay for the misplaced confidence of S. in M.

[Ed. Note.—For other cases, see Attorney and Client, Cent. Dig. § 143; Dec. Dig. § 80.* 2 Va.-W. Va. Enc. Dig. 161, et seq.; 14 id. 136.]

2. Attorney and Client (§ 156*)—Abandonment of Attorney—Fees—Compelling Payment—Reference.—M., after representing certain of the second-class creditors, was abandoned by them and other new

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

counsel employed. Years after, and when the case was practically going into court for final disposition, he filed a petition to require his former clients to pay him a fee equal to one-half of their respective debts, and asking that the cause be referred to a commissioner to take certain accounts with respect to his claim. Held, that as M. had stood by for years and allowed the cause to proceed without any attention on his part, and his former clients having ceased to look to or depend upon him, and having been represented by other counsel, through whom they realized their rights, the court properly declined to refer the case to a commissioner.

[Ed. Note.—For other cases, see Attorney and Client, Cent. Dig. § 362; Dec. Dig. § 156.*]

Appeal from Circuit Court, Franklin County.

Suit by T. W. Miller and others against Penniman & Bro. and others. From a decree in favor of defendants, the petitioners appeal. Affirmed.

Scott, Buchanan & Cardwell, M. H. Altizer, and P. H. Dillard, for appellants.

S. & M. Griffin, E. W. Poindexter, and L. W. Anderson, for appellees.

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.